

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JASON PAUL SCHAEFER,

Plaintiff,

v.

SARAH ALLIN, WASHINGTON
COUNTY, and WADE MUTCHLER,

Defendant.

Case No. 3:18-cv-02231-SI

ORDER TO DISMISS

SIMON, District Judge.

Plaintiff, an inmate at FDC-SEATAC, brings this civil rights action municipal and federal parties pursuant to 42 U.S.C. § 1983 and *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). In a separate Order, the Court has granted Plaintiff leave to proceed *in forma pauperis*. However, for the reasons set forth below, Plaintiff's Complaint is dismissed on the basis that it is frivolous. See 28 U.S.C. § 1915(e)(2).

BACKGROUND

Plaintiff alleges that Defendant Allin, a probation officer with Washington County, conspired to provide information to other law enforcement personnel as part of an investigation into possible criminal activity on Plaintiff's part. He claims Allin had him arrested for crimes he did not commit at the behest of FBI Agent Defendant Mutchler. He contends that the arrest was based upon a mischaracterization of the contents of his laboratory located in his apartment garage. According to Plaintiff, he suffered loss of property, injury, and emotional damages and seeks declaratory relief and monetary relief as a result.

STANDARDS

Pursuant to 28 U.S.C. § 1915A(a), the Court is required to screen prisoner complaints seeking relief against a governmental entity, officer, or employee and must dismiss a complaint if the action is frivolous, malicious, or fails to state a claim upon which relief may be granted. 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). In order to state a claim, Plaintiff's Complaint must contain sufficient factual matter which, when accepted as true, gives rise to a plausible inference that defendants violated plaintiff's constitutional rights. *Ashcroft v. Iqbal*, 556 U.S.

662, 678 (2009); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 556-57 (2007). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678.

Dismissal for failure to state a claim is proper if it appears beyond doubt that Plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *Ortez v. Washington County*, 88 F.3d 804, 806 (9th Cir. 1996); *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). Because Plaintiff is proceeding *pro se*, the Court construes his pleadings liberally and affords him the benefit of any doubt. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *Ortez*, 88 F.3d at 806.

DISCUSSION

In this lawsuit, Plaintiff alleges that local and federal authorities violated his Fourth Amendment rights when they shut down the business he was running from his garage and falsely arrested him. This narrative is contained within another pending case Plaintiff is currently litigating in this Court, *Schaefer v. Harris, et al.*, 3:18-cv-02224-SI, where Plaintiff also alleges the violation of his Fourth Amendment rights. Duplicative lawsuits filed by a plaintiff proceeding *in forma*

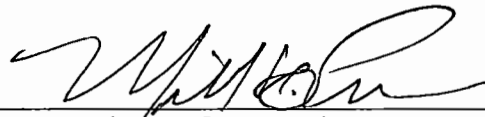
pauperis are subject to dismissal as either frivolous or malicious under 28 U.S.C. § 1915(e). See e.g., *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *McWilliams v. State of Colo.*, 121 F.3d 573, 574 (10th Cir. 1997); *Pittman v. Moore*, 980 F.2d 994, 994-95 (5th Cir. 1993); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). Because the claims and parties do not significantly differ between this lawsuit and 3:18-cv-02224-SI, this case is dismissed on the basis that it is duplicative. The dismissal does not preclude Plaintiff from continuing to litigate 3:18-cv-02224-SI.

CONCLUSION

Based on the foregoing, IT IS ORDERED that Plaintiff's Complaint (#1) is DISMISSED because it is duplicative of another action and, therefore, frivolous. Additionally, this Court certifies that any appeal from this order would not be taken in good faith. See 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(3)(A).

IT IS SO ORDERED

DATED this 22nd day of February, 2019.



Michael H. Simon
United States District Judge